

Rodney L. Umberger, WSBA No. 24948  
Eddy M. Silverman, WSBA No. 53494  
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Email: [esilverman@williamskastner.com](mailto:esilverman@williamskastner.com)  
Attorneys for Walmart Inc.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE

BRIGITTE WOODBURY,

Plaintiff,

v.

WALMART INC.,

Defendant.

NO.

(OKANOGAN COUNTY  
SUPERIOR COURT CAUSE NO.  
21-2-00160-24)

NOTICE OF REMOVAL BY  
DEFENDANT WALMART INC.

***(CLERK'S ACTION REQUIRED)***

TO: CLERK OF THE COURT;

AND TO: PLAINTIFF BRIGITTE WOODBURY;

AND TO: PLAINTIFF'S COUNSEL OF RECORD.

I. RELIEF REQUESTED

Defendant WALMART INC. ("Walmart") seeks to remove the above-captioned case from Okanogan County Superior Court in Washington State to the United States District Court for the Eastern District of Washington at Spokane under 28 U.S.C. §§ 1332, 1441, and 1446.

II. STATEMENT OF FACTS

1. Underlying Incident

Plaintiff Brigitte Woodbury ("Plaintiff") alleges that she was injured when

1 she tripped over a cart while shopping at a Walmart store in Omak, Washington  
2 on February 4, 2021. *See* Declaration of Eddy Silverman, attached hereto as  
3 **Exhibit A**; *see also* Complaint, attached hereto as **Exhibit B**.

4 2. **Relevant Procedural Facts**

5 Plaintiff filed a Complaint in the Superior Court of Washington for  
6 Okanogan County on June 23, 2021. *See* Ex. B. There are no specific allegations  
7 pertaining to damages in the Complaint (no amounts claimed). *See id.*

8 On August 13, 2021, Walmart served Plaintiff with Defendant Walmart  
9 Inc.’s First Interrogatories and Requests for Production to Plaintiff—to which  
10 Plaintiff responded on September 28, 2021. *See* attached hereto as **Exhibit C**.  
11 Walmart, in its Interrogatory No. 28 to Plaintiff, asked: “Please set forth  
12 separately the amounts of (a) any special damages and (b) general damages you  
13 are seeking in this suit.” *Id.* In response to Interrogatory No. 28, Plaintiff stated  
14 that she “anticipate[s] asking a jury to award [her] \$500,000.00 in general  
15 damages.” *Id.*

16 III. **STATEMENT OF THE ISSUE**

17 Whether this case may be properly removed to federal court where there is  
18 total diversity between the parties and the amount in controversy is in excess of  
19 \$75,000 exclusive of interest and costs according to Plaintiff’s response to  
20 Walmart’s Interrogatory No. 28.

21 IV. **EVIDENCE RELIED UPON**

22 This motion is based upon the records and pleadings on file with the Court, as  
23 well as the Declaration of Eddy Silverman, Esq., attached hereto as Exhibit A.  
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V. ARGUMENT

A. This Case Is Removable Under 28 U.S.C. § 1332, Through Which This Court Has Original Jurisdiction Over The Lawsuit Filed by Plaintiff In Okanogan County Superior Court

The district courts shall have original jurisdiction of all civil actions (1) where the parties in the case are diverse as defined by 28 U.S.C. § 1332(a)(1)-(4); (2) where the amount in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs; and (3) where removal is timely. The amount in controversy can either be evident “on the face” of the Complaint or ascertained via some later pleading(s) or “other paper” in the record of the state court proceeding. See 28 U.S.C. § 1446(b)(3); *see also Harris v. Bankers Life and Cas. Co.*, 425 F.3d 689 (2005).

When and how removability is “ascertainable” matters with respect to whether removal is timely under 28 U.S.C. § 1446. There are, generally speaking, two viable “removal periods.” *See Harris*, 425 F.3d at 694. [1] A defendant has 30 days to remove a case if the removability of the case is evident on the face of the complaint; or [2] a defendant has 30 days beyond some later period from which it first becomes ascertainable that the case is removable. *See id.* (“[T]he first thirty-day requirement [to remove] is triggered by defendant’s receipt of an ‘initial pleading’ that reveals a basis for removal. If no ground for removal is evident in that pleading, the case is ‘not removable’ at that stage. In such case, the notice of removal may be filed within thirty days after the defendant receives [‘other paper’] from which it can be ascertained...that removal is proper.”) (citations omitted).

///

1 In this case, (1) diversity between the parties is evident on the face of the  
2 Complaint; (2) the fact that the amount in controversy exceeds the sum or value  
3 of \$75,000 exclusive of interest and costs was not evident on the face of the  
4 Complaint, but is now evident from Plaintiff's response to Walmart's  
5 Interrogatory No. 28 ("interrogatory response"); and (3) insofar as Walmart is  
6 filing this Notice of Removal within 30 days of service of receiving the  
7 aforementioned interrogatory response, Walmart's Notice is timely and this case  
8 may be properly removed under 28 U.S.C. §§ 1446(b) and 1332.

9 1. There Is Diversity Between The Parties

10 Per the Complaint, Plaintiff resides in Okanogan County, Washington. *See*  
11 Ex. B. at ¶ 2.1. Thus, Plaintiff is a "citizen of" Washington state. Walmart is (a)  
12 incorporated in Delaware and (b) its principal place of business is in Arkansas.  
13 Thus, Walmart is "a citizen of" either Delaware or Arkansas, but not Washington  
14 State. Accord 28 U.S.C. § 1332(c)(1). Based on the foregoing, there is diversity  
15 between these parties as described in 28 U.S.C. § 1332(a)(1).

16 2. The Amount In Controversy Exceeds The Sum Or Value Of \$75,000

17 Per Plaintiff's response to Walmart's Interrogatory No. 28, the amount in  
18 controversy in this matter is in excess of \$500,000. *See* Ex. C.

19 3. Walmart's Notice Of Removal Is Timely

20 In this matter, the case stated by the initial pleading was not removable (no  
21 specific amounts claimed in Complaint); however, Plaintiff's answer to  
22 Walmart's Interrogatory No. 28 constitutes "other paper" within the meaning of  
23 28 U.S.C. § 1446 from which it could first be ascertained that this case is  
24 removable. As this Notice is being filed within 30 days of receipt of that  
25 response/"other paper," this Notice is timely.

1 B. Walmart's Notice Of Removal Complies With All Applicable Federal  
2 Procedural Rules Attendant To Removal

3 1. Both The Federal And State Courts Are On Proper Notice Of This  
4 Removal Action

5 This Notice is properly filed in the United States District Court for the  
6 Eastern District of Washington because this Court embraces Okanogan County,  
7 the county in which the state court action is now pending. See 28 U.S.C. §§  
8 128(b) and 1441(a).

9 Pursuant to 28 U.S.C. §§ 1446(d), Walmart is filing a copy of this Notice  
10 with the Clerk of the Okanogan County Superior Court and is also serving a copy  
11 of this Notice on Plaintiff's counsel of record in the state court action.

12 2. All State Court Records And Proceedings Have Been Provided With  
13 This Removal Petition

14 Walmart has filed and/or otherwise provided true and complete copies of  
15 all records and proceedings filed in the state court proceeding being removed by  
16 virtue of this petition. These documents/exhibits constitute and contain the  
17 entirety of the records and proceedings filed in Okanogan County Superior Court  
18 as of the date of filing this Notice. True and complete copies of all pleadings,  
19 records, and documents filed in the state court action are attached hereto as  
20 **Exhibit D.**

21 VI. CONCLUSION

22 Walmart hereby removes this case from the Okanogan County Superior  
23 Court to the United States District Court for the Eastern District of Washington at  
24 Spokane pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. By removing, Walmart  
25

1 does not waive any defenses, including but not limited to lack of personal  
2 jurisdiction, insufficiency of process, or insufficiency of service of process.

3 DATED this 27<sup>th</sup> day of October, 2021.

4  
5 WILLIAMS, KASTNER & GIBBS  
6 PLLC

7 /s/Rodney L. Umberger

8 Rodney L. Umberger, WSBA # 24948

9 /s/Edward M. Silverman

10 Edward M. Silverman, WSBA # 53494

11 Two Union Square

12 601 Union Street, Suite 4100

13 Seattle, WA 98101-2380

14 Phone: 206.628.6600

15 Fax: 206.628.6611

16 Email: rumberger@williamskastner.com

17 esilverman@williamskastner.com

18  
19 ***Counsel for Defendant Walmart Inc.***  
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**CERTIFICATE OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the date indicated below, I caused service of a true and correct copy of the foregoing document in the manner indicated below to:

EMERALD LAW GROUP, PLLC

☒ ECF

Jonathan Nolley, WSBA #35850  
12055 15<sup>th</sup> Avenue NE  
Seattle, WA 98125  
Tel: 206.826.5160  
Email: [jonathan@emeraldgroup.com](mailto:jonathan@emeraldgroup.com)

VALOR LAW GROUP PS

Alex Thomason, WSBA 35975  
110 W Lakeshore Dr.  
Pateros, WA 98846  
Tel: (509) 689-3471  
Email: [alex@valorlawgroup.com](mailto:alex@valorlawgroup.com)  
[madison@valorlawgroup.com](mailto:madison@valorlawgroup.com)

***Counsel for Plaintiff***

Signed at Seattle, Washington this 27<sup>th</sup> day of October, 2021.

WILLIAMS, KASTNER & GIBBS PLLC

/s/Gayle Neligan

Gayle Neligan, Legal Assistant

## EXHIBIT A

Rodney L. Umberger, WSBA No. 24948  
Eddy M. Silverman, WSBA No. 53494  
WILLIAMS, KASTNER & GIBBS PLLC  
Two Union Square  
601 Union Street, Suite 4100  
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Email: [esilverman@williamskastner.com](mailto:esilverman@williamskastner.com)  
Attorneys for Walmart Inc.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE

BRIGITTE WOODBURY,

Plaintiff,

v.

WALMART INC.,

Defendant.

NO.

(OKANOGAN COUNTY  
SUPERIOR COURT CAUSE NO.  
21-2-00160-24)

DECLARATION OF EDDY  
SILVERMAN, ESQ., IN SUPPORT  
OF WALMART INC.'S NOTICE OF  
REMOVAL

I, Eddy Silverman, Esq., hereby declare and say:

1. That I am an attorney of the law firm of WILLIAMS, KASTNER & GIBBS PLLC, and I am licensed to practice law in this Court.

2. I am over the age of eighteen and a U.S. citizen. I have personal knowledge of the facts referred to in this Declaration and could competently testify to these facts if called upon to do so in a court of law.

DECLARATION OF EDDY SILVERMAN, ESQ., IN SUPPORT OF  
WALMART INC.'S NOTICE OF REMOVAL - 1

**Williams, Kastner & Gibbs PLLC**  
601 Union Street, Suite 4100  
Seattle, Washington 98101-2380  
(206) 628-6600





EXHIBIT B

**FILED**

2021 JUN 23 PM 1:05

CHARLEEN GRUOMES  
OKANOGAN COUNTY CLERK

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF OKANOGAN**

BRIGITTE WOODBURY, an individual,

Plaintiff,

v.

WALMART, INC.

Defendant.

NO.

**21-2 0016024**

COMPLAINT FOR DAMAGES

COMES NOW the Plaintiff, Brigitte Woodbury, by and through her attorneys Jonathan Nolley of the Emerald Law Group and Alex Thomason of Valor Law Group, and complains and alleges as follows:

**I. JURISDICTION AND VENUE**

1.1 The above-entitled court has jurisdiction over the subject matter of this lawsuit.

1.2 The above-entitled court is the proper venue for this action because the incidents described herein and the negligent and tortious acts alleged herein occurred in Omak, Okanogan, Washington.

**II. PARTIES**

2.1 At all times material hereto, Plaintiff Brigitte Woodbury ("Plaintiff") is and was an individual residing in Okanogan County, Washington.

COMPLAINT FOR DAMAGES- 1

**EMERALD LAW GROUP**

12055 15<sup>th</sup> Avenue NE  
Seattle, Washington 98125

T: 206.826.5160

F: 206.922.5598

**COPY**

2.2 At all times relevant hereto, Defendant Walmart, Inc ("Walmart") is and was a corporation doing business in Okanogan County, Washington.

### III. CLAIMS AGAINST DEFENDANT

3.1 Defendant is the owner of a local Walmart store located at 902 Engh Road, Omak, Washington.

3.2 On or about February 4, 2021, Plaintiff went shopping at Defendant's store.

3.3 When Plaintiff was in the electronics department of the store, an employee of Defendant, also in the electronics department, was pushing a flat "platform-style truck" cart ("the cart") that was low to the ground.

3.4 This same employee pushed the cart and left it directly behind where Plaintiff was standing with her back turned to the cart.

3.5 Neither the employee nor any other employee of Defendant took any steps to warn Plaintiff of the cart that was directly behind her.

3.6 As Plaintiff turned to leave, she tripped over the cart and suffered injuries.

3.7 At all times relevant hereto, Plaintiff was a business invitee at Defendant's store.

3.8 Defendant owed Plaintiff a duty to maintain a safe premises and to take measures to prevent Plaintiff from encountering any hazards or provide adequate warning to allow Plaintiff to avoid such hazards.

3.9 It was foreseeable that Plaintiff would trip and fall over the low-profile cart that was left behind her.

3.10 Defendant breached its duties when its employee left the cart directly behind Plaintiff and in a place where Plaintiff could not see the cart prior to turning and tripping over the low platform of the cart.

1  
2 3.11 As a direct and proximate result of Defendant's acts and/or omissions described  
3 herein, Plaintiff suffered damages.

4 **IV. DAMAGES**

5 As a direct and proximate result of the Defendant's negligence and acts alleged herein,  
6 Plaintiff was injured, suffered and continue to suffer from, without limitation, severe personal  
7 injuries, physical disability and pain, pain and suffering, future pain and suffering, emotional  
8 trauma, medical expenses, loss of enjoyment of life, lost income and earnings, and other  
9 economic and non-economic damages to be proven at trial.  
10

11 **V. LIMITED PHYSICIAN/PATIENT WAIVER**

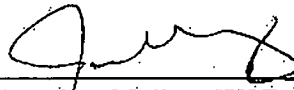
12 Plaintiff hereby waives the physician/patient privilege, but only to the extent required by  
13 RCW 5.60.060, and as limited by Plaintiff's Constitutional rights of privacy, contractual rights of  
14 privacy, and as circumscribed by the ethical and legal obligations of treating physicians and  
15 attorneys for the defendants not to engage in *ex parte* contact.  
16

17 **WHEREFORE**, Plaintiff pray for relief as follows:


- 18 1. Judgment against the Defendant for damages sustained by Plaintiff in an amount to  
19 be determined at trial;  
20 2. For Plaintiff's costs and disbursements herein;  
21 3. For an award of Plaintiff's attorney's fees;  
22 4. For an award of pre-judgment interest at the statutory rate on items of special  
23 damages including, without limitation, expenses of medical care and treatment and property  
24 damage; and  
25 5. For such other and further relief as the court may deem just and equitable.  
26

1  
2 DATED this 16<sup>th</sup> day of June, 2021.

3 EMERALD LAW GROUP, PLLC

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6 Jonathan Nolley, WSBA No. 35850  
7 Attorneys for Plaintiff

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9 VALOR LAW GROUP PS

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11  WSBA No. 35975  
12 Alex Thomason, WSBA No. 35975  
13 Attorneys for Plaintiff  
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## EXHIBIT C

SUPERIOR COURT OF WASHINGTON FOR OKANOGAN COUNTY

BRIGITTE WOODBURY,

Plaintiff,

v.

WALMART INC,

Defendant.

NO. 21-2-00160-24

**DEFENDANT WALMART INC.'S FIRST  
INTERROGATORIES AND REQUESTS  
FOR PRODUCTION TO PLAINTIFF AND  
ANSWERS THERETO**

TO: Brigitte, Plaintiff;

AND TO: Jonathan Nolley/Emerald Law Group, PLLC and Alex Thomason/Valor Law  
Group, PS, Counsel for Plaintiff.

In accordance with CR 33 and CR 34, please answer the following Interrogatories and Requests for Production fully and separately, under oath, within thirty (30) days of the date of service.

In accordance with CR 26(b)(4), Defendant WALMART INC. ("Walmart") will object at trial to the use of or reference to any testimony by any expert witness whose identity, opinions and summary of the grounds for each opinion are not provided or disclosed in response to these interrogatories and requests for production.

If you claim any privilege with respect to any information called for by an interrogatory or request for production or any part thereof, identify the type of privilege which is claimed,

DEFENDANT WALMART INC.'S FIRST INTERROGATORIES  
AND REQUESTS FOR PRODUCTION TO PLAINTIFF AND  
ANSWERS THERETO- 1

**Emerald Law Group PLLC**  
12055 15<sup>th</sup> Avenue NE  
Seattle, Washington 98125  
(206) 826-5160

1 impossible to sleep at night. Because I was on blood thinners, I suffered severe bruising  
2 resulting from the fall that was very painful. Though I have improved with surgery and  
3 physical therapy, I continue to have pain with certain movements and am fearful of re-tearing  
4 the shoulder again, something that continues to limit my daily activities.  
5

6  
7 **INTERROGATORY NO. 27:** Please IDENTIFY any liens, including amount(s),  
8 against any settlement in this LAWSUIT.

9 **ANSWER:**  
10 Medicare has a lien but the amount is not yet known.  
11

12 **INTERROGATORY NO. 28:** Please set forth separately the amounts of (a) any  
13 special damages and (b) general damages you are seeking in this suit.

14 **Note:** Referring to medical records and/or stating that damages will “be determined by a  
15 trier of fact,” or some variation of that contention, is not responsive. This question seeks  
16 to know both the economic and non-economic (“pain-and-suffering”) damages you are  
17 seeking in this lawsuit.  
18

19 **ANSWER:**  
20 I have not obtained all the medical billing records to calculate my total medical bills from the  
21 date of the incident through my last physical therapy visit earlier this month. This answer will  
22 be supplemented.


23 To the extent it is necessary to reduce my general damages to a specific amount, I anticipate  
24 asking a jury to award me \$500,000.00 in general damages.  
25

DEFENDANT WALMART INC.’S FIRST INTERROGATORIES  
AND REQUESTS FOR PRODUCTION TO PLAINTIFF AND  
ANSWERS THERETO- 13

**Emerald Law Group PLLC**  
12055 15<sup>th</sup> Avenue NE  
Seattle, Washington 98125  
(206) 826-5160

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DATED this 28 day of September, 2021, in Winthrop, Washington.

DocuSigned by:  
  
 52324C268BAC4A5

Brigitte Woodbury, Plaintiff

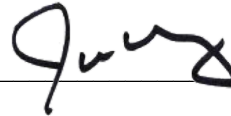
**Emerald Law Group PLLC**  
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Seattle, Washington 98125  
(206) 826-5160



**ATTORNEY'S CR 26 CERTIFICATION**

The undersigned attorney certifies pursuant to Civil Rule 26(g) that he or she has read each response and objection to these discovery requests, and that to the best of his or her knowledge, information, and belief formed after a reasonable inquiry, each is (1) consistent with the Civil Rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the costs of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

Dated this 28th day of September, 2021.



DEFENDANT WALMART INC.'S FIRST INTERROGATORIES  
AND REQUESTS FOR PRODUCTION TO PLAINTIFF AND  
ANSWERS THERETO- 21

**Emerald Law Group PLLC**  
12055 15<sup>th</sup> Avenue NE  
Seattle, Washington 98125  
(206) 826-5160

EXHIBIT D

**FILED**

2021 JUN 23 PM 1:05

CHARLEEN GRUOMES  
OKANOGAN COUNTY CLERK

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF OKANOGAN**

BRIGITTE WOODBURY, an individual,

Plaintiff,

v.

WALMART, INC.

Defendant.

NO.

**21-2 0016024**

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**I. JURISDICTION AND VENUE**

1.1 The above-entitled court has jurisdiction over the subject matter of this lawsuit.

1.2 The above-entitled court is the proper venue for this action because the incidents described herein and the negligent and tortious acts alleged herein occurred in Omak, Okanogan, Washington.

**II. PARTIES**

2.1 At all times material hereto, Plaintiff Brigitte Woodbury ("Plaintiff") is and was an individual residing in Okanogan County, Washington.

COMPLAINT FOR DAMAGES- 1

**EMERALD LAW GROUP**

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T: 206.826.5160

F: 206.922.5598

**COPY**

2.2 At all times relevant hereto, Defendant Walmart, Inc ("Walmart") is and was a corporation doing business in Okanogan County, Washington.

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9 economic and non-economic damages to be proven at trial.  
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11 **V. LIMITED PHYSICIAN/PATIENT WAIVER**

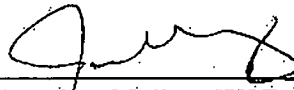
12 Plaintiff hereby waives the physician/patient privilege, but only to the extent required by  
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15 attorneys for the defendants not to engage in *ex parte* contact.  
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17 **WHEREFORE**, Plaintiff pray for relief as follows:


- 18 1. Judgment against the Defendant for damages sustained by Plaintiff in an amount to  
19 be determined at trial;  
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23 damages including, without limitation, expenses of medical care and treatment and property  
24 damage; and  
25 5. For such other and further relief as the court may deem just and equitable.  
26

1  
2 DATED this 16<sup>th</sup> day of June, 2021.

3 EMERALD LAW GROUP, PLLC

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6 Jonathan Nolley, WSBA No. 35850  
7 Attorneys for Plaintiff

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9 VALOR LAW GROUP PS

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11  WSBA No. 35850  
12 Alex Thomason, WSBA No. 35975  
13 Attorneys for Plaintiff  
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SUPERIOR COURT OF WASHINGTON FOR OKANOGAN COUNTY

BRIGITTE WOODBURY,

Plaintiff,

v.

WALMART INC,

Defendant.

NO. 21-2-00160-24

NOTICE OF APPEARANCE OF  
DEFENDANT WALMART INC.

TO: CLERK OF THE COURT; and

TO: COUNSEL FOR PLAINTIFF

PLEASE TAKE NOTICE that Defendant WALMART INC. without waiving objections as to improper service, venue or jurisdiction, hereby appears in the above entitled cause by and through its attorneys, Williams, Kastner & Gibbs PLLC, and requests that all further papers and pleadings herein, exclusive of original process, be served upon the undersigned attorneys at the address stated below.

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NOTICE OF APPEARANCE OF DEFENDANT WALMART INC. 1

**Williams, Kastner & Gibbs PLLC**  
601 Union Street, Suite 4100  
Seattle, Washington 98101-2380  
(206) 628-6600

1 DATED this 27<sup>th</sup> day of July, 2021.

2 WILLIAMS, KASTNER & GIBBS PLLC

3  
4 

5 Rodney L. Umberger, WSBA No. 24948  
6 Eddy Silverman, WSBA No. 53494

7 Two Union Square  
8 601 Union Street, Suite 4100  
9 Seattle, WA 98101-2380  
10 Phone: 206.628.6600  
11 Fax: 206.628.6611  
12 Email: rumberger@williamskastner.com  
13 esilverman@williamskastner.com

14 *Counsel for Defendant Walmart Inc.*

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NOTICE OF APPEARANCE OF DEFENDANT WALMART INC. 2

**Williams, Kastner & Gibbs PLLC**  
601 Union Street, Suite 4100  
Seattle, Washington 98101-2380  
(206) 628-6600

**CERTIFICATE OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the date indicated below, I caused service of a true and correct copy of the foregoing document in the manner indicated below to:

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☒ USPS

☒ E-mail

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Seattle, WA 98125

Tel: 206.826.5160

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***Counsel for Plaintiff***

Signed at Lynnwood, Washington this 27<sup>th</sup> day of July, 2021.

WILLIAMS, KASTNER & GIBBS PLLC



Catherine Berry, Legal Assistant

[cberry@williamskastner.com](mailto:cberry@williamskastner.com)

NOTICE OF APPEARANCE OF DEFENDANT WALMART INC. 3

**Williams, Kastner & Gibbs PLLC**  
601 Union Street, Suite 4100  
Seattle, Washington 98101-2380  
(206) 628-6600



SUPERIOR COURT OF WASHINGTON FOR OKANOGAN COUNTY

BRIGITTE WOODBURY,

Plaintiff,

v.

WALMART INC,

Defendant.

NO. 21-2-00160-24

**JURY DEMAND – 12 JURORS**

(Clerk's Action Required)

Defendant Walmart Inc. hereby demands a trial by a jury of 12, and deposit with the Clerk of the Court the statutory fee of \$250.00.

\\

\\

\\

JURY DEMAND – 12 JURORS 1

**Williams, Kastner & Gibbs PLLC**  
601 Union Street, Suite 4100  
Seattle, Washington 98101-2380  
(206) 628-6600

1 DATED this 10<sup>th</sup> day of August, 2021.

2 WILLIAMS, KASTNER & GIBBS PLLC

3  
4 

5 Rodney L. Umberger, WSBA No. 24948  
6 Eddy Silverman, WSBA No. 53494

7 Two Union Square  
8 601 Union Street, Suite 4100  
9 Seattle, WA 98101-2380  
10 Phone: 206.628.6600  
11 Fax: 206.628.6611  
12 Email: rumberger@williamskastner.com  
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14 *Counsel for Defendant Walmart Inc.*

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JURY DEMAND – 12 JURORS 2

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***Counsel for Plaintiff***

Signed at Lynnwood, Washington this 10<sup>th</sup> day of August, 2021.

WILLIAMS, KASTNER & GIBBS PLLC



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JURY DEMAND – 12 JURORS 3

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SUPERIOR COURT OF WASHINGTON FOR OKANOGAN COUNTY

BRIGITTE WOODBURY,

Plaintiff,

v.

WALMART INC.,

Defendant.

NO. 21-2-00160-24

DEFENDANT WALMART INC.'S  
ANSWER TO COMPLAINT FOR  
DAMAGES

WALMART INC. ("Walmart"), by and through its attorneys of record, hereby answers Plaintiff BRIGITTE WOODBURY'S ("Plaintiff") Complaint as follows:

1. Paragraphs 1.1 and 1.2 of the Complaint call for a legal conclusion and/or make assertions to which no response is required under CR 8. To the extent a response is required, Walmart admits that the disputed events described in the Complaint ("events in question") occurred in Omak, Okanogan County, Washington, while deferring to the Court and to Washington law with respect to questions of jurisdiction and proper venue. Walmart denies negligence and denies having engaged in "negligent and tortious acts" as described in the Complaint.

2. Walmart is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2.1 of the Complaint.

3. In response to the allegations contained in paragraph 2.2 of the Complaint,

DEFENDANT WALMART INC.'S ANSWER TO COMPLAINT FOR  
DAMAGES 1

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1 Walmart admits that Walmart Inc. is a corporation, and further admits that Walmart Inc.  
2 transacts business in Okanogan County, Washington, among other places.

3 4. In response to the allegations contained in paragraph 3.1 of the Complaint,  
4 Walmart admits that Walmart Inc. is the owner of a Walmart Supercenter located at 902 Eng  
5 Road, Omak, Washington (“Omak Walmart”).  
6

7 5. In response to the allegations contained in paragraph 3.2 of the Complaint,  
8 Walmart admits that Plaintiff was on the premises of the Omak Walmart at the time of the  
9 events in question.

10 6. In response to the allegations contained in paragraph 3.3 of the Complaint,  
11 Walmart admits that the events in question occurred in or around an area of the Omak Walmart  
12 where electronics are sold. Walmart further admits that a Walmart associate had been utilizing  
13 an “L-Cart” in or around this same area at or around the time of the aforementioned events.  
14

15 7. Walmart denies the allegations contained in paragraph 3.4 of the Complaint.

16 8. Walmart is without knowledge or information sufficient to form a belief as to  
17 the truth of the allegations contained in paragraph 3.5 of the Complaint, and therefore denies  
18 the same.

19 9. In response to the allegations contained in paragraph 3.6 of the Complaint,  
20 Walmart admits that Plaintiff purportedly tripped over or near an L-Cart on the date of the  
21 events in question. Walmart is without knowledge or information sufficient to know whether  
22 Plaintiff was turning to leave at this time or whether Plaintiff was injured as a consequence of  
23 this trip.  
24

25 10. Paragraph 3.7 of the Complaint calls for a legal conclusion and/or makes

1 assertions to which no response is required under CR 8. To the extent a response is required,  
2 Walmart is without knowledge or information sufficient to know whether Plaintiff was a  
3 business invitee “at all times relevant hereto” and therefore denies the allegations contained in  
4 this paragraph.

5  
6 11. Paragraph 3.8 of the Complaint calls for a legal conclusion and/or makes  
7 assertions to which no response is required under CR 8. To the extent a response is required,  
8 Walmart admits that Walmart Inc. is bound by the duties of premises owners owed to  
9 customer-invitees defined by and under Washington law with respect to operations in Walmart-  
10 owned retail establishments within the State of Washington.

11 12. Walmart denies the allegations contained in paragraphs 3.9, 3.10, and 3.11 of  
12 the Complaint.  
13

14 AFFIRMATIVE DEFENSES

15 Walmart has not had an opportunity to conduct a full inquiry of the facts underlying  
16 this lawsuit, but based upon its knowledge, information, and belief formed after discovery in  
17 similar lawsuits wishes to interpose the following affirmative defenses to preserve its right to  
18 present said defenses at the time of trial in this matter. Upon request and after having  
19 conducted discovery in this case, Walmart will voluntarily withdraw those affirmative defenses  
20 that are unsupported by the facts revealed in pre-trial discovery and investigation.

21 1. Plaintiff’s damages, if any, were proximately caused by the negligence of  
22 Plaintiff in failing to exercise reasonable care.

23 2. Plaintiff’s claimed injuries and damages were due to actions of third parties  
24 beyond the control of Walmart.

25 3. The risk of injury or damage to Plaintiff was not foreseeable to Walmart.

DEFENDANT WALMART INC.’S ANSWER TO COMPLAINT FOR  
DAMAGES 3

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1           4.       Plaintiff's claims are barred by some or all of the following: waiver, estoppel,  
2 laches, ratification, acquiescence, accord and satisfaction, and/or consent.

3           5.       Walmart took precautions and affirmative actions that were consistent with the  
4 state of its knowledge at the time.

5           6.       To the extent any defective or dangerous condition existed, said condition was  
6 open and obvious.

7           7.       The condition alleged was not dangerous, as a matter of law.

8           8.       Walmart had no notice of the allegedly dangerous condition.

9           9.       Walmart exercised reasonable care to protect Plaintiff and/or did not breach any  
10 duty to Plaintiff.

11          10.      Plaintiff's alleged damages are the result of pre-existing injuries or conditions.

12          11.      Plaintiff had adequate warning of the allegedly dangerous condition.

13          12.      Plaintiff assumed the risk of injury.

14          Pursuant to RCW 4.22.070 and CR 12(i), the percentage of fault that allegedly caused  
15 Plaintiffs' injuries, if any, should be apportioned among the following parties or entities:

16               A.      Plaintiffs, for engaging in any conduct which may have increased the  
17 risk of being injured during and/or preceding the incident, and any other factors that future  
18 discovery may disclose regarding the degree of fault attributable to Plaintiffs;

19               B.      Other entities that contributed to Plaintiffs' alleged injuries having  
20 specific factual or procedural defenses that bar Plaintiffs' cause of action against those entities;  
21 and

22               C.      Any non-party Defendant(s) that may have caused or contributed to  
23 Plaintiffs' claimed injuries and damages.

24          Walmart reserves the right to seek leave to amend this Answer (a) for the specific  
25 purpose of naming other parties believed to have caused or contributed to Plaintiffs' claimed

1 injuries and damages, as well as (b) generally, as future discovery may warrant.

2 Walmart denies each and every allegation of Plaintiff's Complaint not specifically  
3 admitted or otherwise pled to herein.

4 Walmart hereby incorporates by reference those affirmative defenses enumerated in  
5 Rule 8 and Rule 12 of the Washington State Court Rules as if fully set forth herein. In the  
6 event further investigation or discovery reveals the applicability of any such defenses, Walmart  
7 reserves the right to seek leave of Court to amend its Answer to specifically assert any such  
8 defense(s). Such defenses are herein incorporated by reference for the specific purpose of not  
9 waiving any such defense.

10 Pursuant to Rule 11 of the Washington State Court Rules, all possible affirmative  
11 defenses may not have been alleged herein insofar as sufficient facts are not available after  
12 reasonable inquiry from the filing of Plaintiff's Complaint, and therefore Walmart reserves the  
13 right to amend its Answer to assert additional affirmative defenses in the event discovery  
14 indicates that additional affirmative defenses would be appropriate.

15 PRAYER FOR RELIEF

16 WHEREFORE, having answered Plaintiff's Complaint and having asserted affirmative  
17 defenses, Walmart prays for judgment as follows:

- 18 1. For dismissal of Plaintiff's Complaint with prejudice;  
19 2. For all costs, disbursements, and reasonable and statutory attorney fees incurred in the  
20 defense of this action, in an amount to be determined at the time of trial; and  
21 3. For such other and further relief as the Court deems just and equitable.

22 DATED this 3<sup>rd</sup> day of September, 2021.  
23  
24  
25

DEFENDANT WALMART INC.'S ANSWER TO COMPLAINT FOR  
DAMAGES 5

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esilverman@williamskastner.com

*Counsel for Defendant Walmart Inc.*

DEFENDANT WALMART INC.'S ANSWER TO COMPLAINT FOR  
DAMAGES 6

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[madison@valorlawgroup.com](mailto:madison@valorlawgroup.com)

***Counsel for Plaintiff***

Signed at Lynnwood, Washington this 3<sup>rd</sup> day of September, 2021.

WILLIAMS, KASTNER & GIBBS PLLC



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[cberry@williamskastner.com](mailto:cberry@williamskastner.com)

DEFENDANT WALMART INC.'S ANSWER TO COMPLAINT FOR  
DAMAGES 7

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